

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	<b>CHARGE NO.:</b> 2010CH0287
)	<b>HUD NO.:</b> 05-09-1535-8
<b>MARY UPTON</b> )	<b>ALS NO.:</b> 09-0758
)	
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Mary Upton's (the "Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2010CH0287; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following findings of fact and reasons:

1. On July 27, 2009, the Petitioner filed an unperfected charge of discrimination with the Respondent, which charge was perfected on August 18, 2009. The Petitioner alleged her former landlord, Maurice Sanders ("Landlord"), refused to allow her to make a reasonable modification because of her disabilities, osteoarthritis and rheumatoid arthritis and seizure disorder (Count A), subjected her to discriminatory terms, conditions, privileges, and services because of her sex, female (Count B), and her disabilities (Count C), and failed to accommodate her disabilities (Count D), in violation of Sections 3-102.1(B) and (C) of the Illinois Human Rights Act (the "Act"). On November 20, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On December 28, 2009, the Petitioner timely filed this Request.
2. The Landlord owned a two-unit residential building (the "Subject Property"). In April 2009, the Petitioner began leasing<sup>2</sup> a second-floor apartment in the Subject Property.
3. In June of 2009, the Petitioner requested that the Landlord modify the Subject Property, at the Landlord's expense, by placing handrails in the stairwells of the Subject Property. This

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

<sup>2</sup> The pleadings filed with the Commission in this Request do not state the specific terms of the lease, including the length of the lease period.

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modification was requested as an accommodation for the Petitioner's physical disabilities. The Landlord declined to pay for the installation of handrails.

4. On June 23, 2009, the Petitioner requested the Landlord release her from her lease early without penalty as an accommodation for her disabilities. The Landlord did not grant this request.
5. The Petitioner moved out of the Subject Property in October of 2009.
6. In her charge, the Petitioner alleged the Landlord discriminated against her because of her disabilities and sex. In Count A, the Petitioner alleged the Landlord denied her request for a reasonable modification to the Subject Property as an accommodation for her disabilities when he refused her request to have handrails installed. In Counts B and C, the Petitioner alleged that the Landlord subjected her to discriminatory terms, conditions, privileges, or services and facilities based on her sex and her disabilities because he did not allow her to terminate her lease early. In Count D, the Petitioner alleged the Landlord failed to reasonably accommodate her disabilities by not allowing her to terminate her lease early.
7. In her Request, the Petitioner contends she initially refused to pay for the installation of the handrails because she believed it was the Landlord's duty to do so, since the Subject Property had failed an inspection by the Chicago Housing Authority ("CHA"). The Petitioner contends that after the CHA had informed her the Landlord was not required to pay to install handrails, the Petitioner offered to pay for the handrail installation. The Complainant alleges the Landlord refused her request to pay for the handrail installation. The Petitioner includes in her Request new allegations of harassment and retaliation by the Landlord.
8. In its Response, the Respondent argues the dismissal of the Petitioner's charge should be sustained for lack of substantial evidence. As to Count A, the Respondent argues there is no evidence that the Petitioner offered to pay for the handrail installation or that the Landlord rejected her offer to pay for the installation of the handrails. As to Counts B and C, the Respondent determined that the Landlord had no duty to terminate the Petitioner's lease early simply because the Petitioner was unhappy with conditions at the Subject Property. As to Count D, the Respondent contends that the purpose of a reasonable accommodation is to enable the Petitioner to enjoy the use of the Subject Property, and early termination of her lease would not have enabled the Petitioner to enjoy the use of the Subject Property. Finally, the Respondent argues the Commission cannot consider the Petitioner's new allegations of harassment and retaliation, raised for the first time in her Request, because the Commission is limited to reviewing the allegations in the original charge of discrimination.

## **CONCLUSION**

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D) (West 2010). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.)

In Count A, the Petitioner alleged the Landlord failed to make a reasonable modification to the Subject Property as an accommodation for her disabilities in violation of Section 3-102.1(C)(1) of the Act. Section 3-102.1(C)(1) provides in relevant part:

*It is a civil rights violation to refuse to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before modifications, reasonable wear and tear excepted.*

775 ILCS 5/3-102.1(C)(1) (West 2010)

The language of the Act required the Petitioner to pay the expense of the requested modification to the Subject Property. In this case, there is no evidence that the Petitioner offered to pay for the requested modification to the Subject Property. Therefore, there is no substantial evidence of a violation of the Act as to Count A.

In Count B and Count C, the Petitioner alleged the Landlord refused her request for an early release from her lease because of her sex and her disabilities, respectively, thus subjecting her to different terms and conditions based on her protected statuses, in violation of the Act. However, there is no substantial evidence the Landlord treated the Petitioner less favorably than other non-female and non-disabled tenants. In particular, there is no evidence the Landlord allowed a non-female, non-disabled tenant to terminate his lease early. For that reason, Count B and Count C of the charge were properly dismissed for lack of substantial evidence.

In Count D, the Petitioner alleged the Landlord violated Section 3-102.1(C)(2) of the Act when he refused the Petitioner's request for early termination of her lease as a reasonable accommodation for her disabilities. Section 3-102.1(C)(2) provides:

*It is a civil rights violation to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.*

775 ILCS 5/3-102.1(C)(2) (West 2010).

The plain language of the Act provides that the purpose of a reasonable accommodation is to afford the disabled person an equal opportunity to use and enjoy the property. There has been no evidence presented that the Petitioner's requested accommodation of early lease termination was necessary to afford her the equal opportunity to use and enjoy the Subject Property. Therefore, Count D was properly dismissed for lack of substantial evidence.

Finally, the Commission cannot consider the new allegations of harassment and retaliation made by the Petitioner for the first time in her Request because on a request for review, the

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Commission is limited to review of claims made in the original charge. See Deen v. Lustig, 337 Ill.App.3d 294, 785 N.E.2d 521 (4<sup>th</sup> Dist. 2003).

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Maurice Sanders, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS                     )  
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HUMAN RIGHTS COMMISSION        )

Entered this 28<sup>th</sup> day of July 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini